



COMMONWEALTH of VIRGINIA

Office of the Governor

Doug Domenech
Secretary of Natural Resources

November 29, 2010

Mr. Shawn Garvin
Regional Administrator
U.S. EPA Region 3
1650 Arch Street (3PM52)
Philadelphia, PA 19103-2029

RE: Transmittal of Virginia's Final Phase 1 Watershed Implementation Plan

Dear Mr. Garvin:

On behalf of Virginia Governor Robert F. McDonnell, enclosed is Virginia's Phase I Watershed Implementation Plan. The Chesapeake Bay is a national treasure and an ecological wonder. As Virginians, we are committed to ensuring a clean and vibrant Chesapeake Bay for future generations to cherish. We strongly believe a clean Bay is good for the economic well being of the State.

Since the submission of our draft plan on September 3, and EPA's response to the draft, we have been involved, along with EPA, in various stakeholder and public comment meetings across the state. During these sessions groups expressed their opinions and feedback on our draft plan. As a result, we have made substantial changes to the draft Plan after consultation with EPA, many stakeholders, and the public.

We have now crafted a good, amended plan that addresses the issues raised by EPA, and allows us to achieve pollution reductions absent "backstops" from EPA. However, the unexpected results of the most recent model run received from EPA on Tuesday, November 23 that showed a surprising allocation gap of more than a million pounds of nitrogen, force us to submit this plan as only an "initial submission." With only 14 work hours before the deadline today we could not fully react to this very late data, although working through much of the holiday weekend we have been able to devise changes increasing the Wastewater Treatment load reduction significantly. Per discussions between Chuck Fox, EPA Senior Advisor to the Administrator for the Chesapeake Bay, and Martin Kent, the Governor's Chief of Staff, Virginia and EPA will continue to work to modify this plan over the next 7 to 10 days. These extra days will allow for additional model runs to identify ways to close this unexpected gap in the plan.

As we did in our draft plan, we must reiterate Virginia's concerns about the process, cost, legality, allocations, and compressed timing in the development of this plan. EPA asserts that it must develop the Bay TMDL by December 31, 2010 pursuant to the requirements of the Consent Decree entered in the case American Canoe Association et al. v. the United States EPA, 54 F. Supp. 2d 621 (E.D. Va. 1999). We note, again, that Virginia was not a party to that case, and the Consent Decree established a deadline of May 1, 2011 for the EPA to establish TMDLs for certain identified Virginia waters and pollutants if Virginia had not done so itself. This rush to completion has caused concerns in local governments and industry as well.

It is important to emphasize again that this plan is being developed during the worst economy in generations. Virginians have already invested billions of dollars in Chesapeake Bay water quality improvement to date. Full implementation of this plan will likely cost more than \$7 billion new dollars which would be another federal unfunded mandate on the state, localities, private industries, and homeowners. In addition to the new health care law and other new regulatory burdens, it is placing enormous new fiscal stress on state budgets. However as a show of good faith, the Governor will include \$36.4 million new dollars in our Water Quality Improvement Fund in his 2011 budget amendments. In these austere times, we cannot guarantee what additional funding will be provided by our General Assembly. It is our position that the success of the WIP may be subject to the provision of sufficient federal funding to assist in covering these massive new unfunded mandates.

As we indicated before, Virginia will move forward with the implementation of this plan with a clear focus on flexibility and cost effectiveness. For instance, it is our belief that an expanded nutrient credit exchange program will afford the same approach to other sectors, particularly urban stormwater and septic systems, and it will allow for decisions to be made across sectors in an orderly and cost-effective manner. Therefore Virginia will rely on principles of adaptive management taking advantage of new technology and low cost methods that may become available in the next 15 years to achieve our goals.

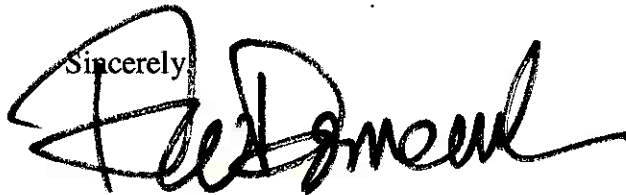
Again, Virginia must state its significant concerns with the nearly absolute reliance on management by computer model. While the Bay model has seen years of development it continues to experience flaws that call its outcomes into question. We are especially concerned that level of precision expected is far beyond what the model is capable of and fails to consider the economic consequences of its actions.

I would also call your attention to our proposed approach for the James River watershed. Because of its geographic location, the James has less impact on the water quality of the mainstem of the Chesapeake Bay than any other river. The James also is unique because of the chlorophyll standards that were adopted in 2005 with the concurrence of EPA. We believe that because sufficient new information is available for the James River, we should take the time necessary to review the James River numeric chlorophyll standards to ensure that they reflect the best science and regulatory approaches. Therefore, we have included a detailed plan to accomplish this review and

amend standards if necessary prior to the scheduled revision of the TMDL in 2017. We will also consider developing a local chlorophyll-based TMDL for the James River. Our plan demonstrates that we will meet the 2017 target loads prescribed by EPA in all basins, including the James.

Based on all these issues, Virginia again reserves the right to adjust this plan based on new information such as conservation efforts currently implemented but not accounted for in the model, adverse economic impacts on business, funding availability from federal and other sources, and improved scientific methodologies.

We understand that our work will not end with the submission of our Watershed Implementation Plan. We will continue to work with EPA, stakeholders, and the public to ensure that our implementation improves water quality in a manner that is sensible, fair and cost effective as this process unfolds over the next 15 years. The Governor is fully supportive of all reasonable efforts to improve this great natural resource in conjunction with the leaders of the other Bay states.

Sincerely,


Douglas W. Domenech
Secretary of Natural Resources